

FREEDOM OF INFORMATION ACT REQUEST

April 13, 2021

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (2310A)
Washington, DC 20460

Re: FOIA Request - Certain Agency Records (Correspondence)

Dear Sir or Madam:

On behalf of Energy Policy Advocates, recognized by the Internal Revenue Service as a non-profit public policy institute under § 501(c)(3) of the Internal Revenue Code, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, please provide copies of all electronic correspondence, whether email, text, SMS, etc. (see, *supra*), and any accompanying information, including also any attachments, a) sent to or from or copying i) Associate Administrator Lindsay Hamilton and/or ii) Chief of Staff Dan Utech, that b) includes, *anywhere*, the following search terms: i) “Paris”, ii) “Glasgow”, iii) “COP-26”, and/or iv) “COP26”, and c) is dated April 1, 2021 through April 13, 2021, inclusive. The above terms are ***not*** case sensitive.

We request this be placed in the “simple” category. If it is not placed in the “simple” category, please explain why it is not. If processing this request using the ERDMS system would produce the results quicker, I request that you use that system.

Energy Policy Advocates requests records on your system, e.g., its backend logs, and does not seek only those records which survive on an employee’s own machine or account. We do not demand your office produce requested information in any particular form, instead **we request records in their native form**, with specific reference to the U.S. Securities and Exchange Commission Data Delivery Standards. The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, “Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. *(Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.)*” (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information requested, if your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, *and* accompanied by a load file to ensure the requested information appropriate for that discrete record is associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

Request for Fee Waiver

We request the Office waive or substantially reduce any fees associated with this request. **Our request for fee waiver is in the alternative, first for reasons of significant public interest, and second, on the basis of the Energy Policy Advocates' status as a media outlet. Failure by the Office to consider and address both requests in the alternative would be *prima facie* arbitrary and capricious.** We do not seek the information for a commercial purpose. Energy Policy Advocates is organized and recognized by the Internal Revenue Service as a 501(c)3 educational organization. It actively publishes and broadly disseminates public records pertaining to energy and environmental policymaking. The requester has no commercial interest possible in these records.

The below clearly demonstrates that:

The requested information is of widespread public, media and legislative interest.

Requester is a non-profit classified as such by the Internal Revenue Service.

Requester does not seek these records for a commercial purpose and has no commercial interest possible in these records.

1. The Requester intends to broadly disseminate the information requested.

The Requester has both the intent and the ability to convey any information obtained through this request to the public. Energy Policy Advocates publishes its finding regularly through the organization's website, www.epadvocates.org. This work is frequently cited in newspapers and trade and political publications. Requester intends to broadly disseminate public information obtained under this FOIA as it has other information relevant to its mission and work.

2. **Disclosure is “likely to contribute” to an understanding of specific government operations or activities because the releasable material will be meaningfully informative in relation to the subject matter of the request.**

The requested records, if they exist, pertain to the sweeping environmental regulatory agenda of the Biden Administration, which is of major media, public and policy interest. Any records responsive to this request therefore are likely to have an informative value and are “likely to contribute to an understanding of Federal government operations or activities”. We note President Biden's environmental agenda has been the subject of substantial media interest.¹

3. **The disclosure will contribute to the understanding of the public at large, as opposed to merely that of the requester or a narrow segment of interested persons.**

Energy Policy Advocates is dedicated to and has a documented record of promoting the public interest, advocating sensible policies to protect human health and the environment, broadly disseminating information relevant to the policy issues on which its experts work. With a demonstrated interest and record in the relevant policy debates and expertise in the subject of energy- and environment-related regulatory policies, Energy Policy Advocates unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the “public at large.”

4. **The disclosure will contribute “significantly” to public understanding of government operations or activities.**

¹ See, e.g., <https://www.washingtonpost.com/climate-environment/2021/01/26/biden-environmental-justice-climate/>; <https://www.washingtonpost.com/climate-environment/2021/01/14/biden-climate-staff/> (last assessed April 8, 2021).

The Requester repeats and incorporates here by reference the arguments above from the discussion of how disclosure is “likely to contribute” to an understanding of specific government operations or activities.

The Requester has stated “with reasonable specificity that its request pertains to operations of the government,” and that it intends to broadly disseminate responsive records. Therefore, **Energy Policy Advocates first seeks waiver of any fees** under FOIA on the above significant public interest basis. Disclosure of records responsive to this request will contribute “significantly” to public understanding of government operations or activities. 5 U.S.C. § 552(a) (4)(A)(iii) (“Documents shall be furnished without any charge...if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester”).

In the alternative, Energy Policy Advocates requests a waiver or reduction of fees as a representative of the news media. The provisions for determining whether a requesting party is a representative of the news media, and the “significant public interest” provision, are not mutually exclusive. As Energy Policy Advocates is a non-commercial requester, it is entitled to liberal construction of the fee waiver standards. 5 U.S.C.S. § 552(a)(4)(A)(iii), *Perkins v. U.S. Department of Veterans Affairs*, 754 F.Supp.2d. 1 (D.D.C. 2010). Alternately and only in the event the Agency refuses to waive our fees under the “significant public interest” test, which Requester would then appeal while requesting the Agency proceed with processing on the grounds that Energy Policy Advocates is a media organization, a designation the federal government has acknowledged for the purposes of FOIA.²

² See, e.g., Securities & Exchange Commission Request No. 21-00769-FOIA; Department of the Interior Request No. DOI-OS-2021-003335.

Requester asks for a waiver or limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by.... a representative of the news media...”).

Energy Policy Advocates looks forward to your response. In the event you have any questions, please feel free to contact me at ncornettlaw@gmail.com.

Sincerely,
Neal Cornett
Attorney at Law